IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION NO.510 OF 2001
AND CIVIL REVISION PETITION NO. 511 OF 2001
AND C.M.P.No.2805 OF 2001.

1.Sri Buvaneswari Graph Paper
rep.by its Proprietrix
Smt.Sharadambal

2.Smt.Saradambal

3.S.Sundaramurthy

4.V.Ramalinga Gounder .. Petitioners in both CRPs.

-Vs-

The National Small Industries
Corporation Ltd.,
rep.by its Regional General Manager
615, Anna Salai,
Chennai-6. .. Respondent in both CRPs.

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure for the reliefs as stated therein.

For petitioners : Mrs.Chitra Sampath

For respondent : Mr.L.Jayakumar

:COMMON ORDER

Both the above Civil Revision Petitions are filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decretal orders both dated 22.11.2000 respectively made in C.M.P.Nos.44 8 and 449 of 2000 in A.S.S.R.No.10966 of 2000 by the learned Principal Judge, City Civil Court, Chennai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the respondent

herein has filed the suit in O.S.No.9472 of 1995 before the IV Assistant City Civil Court, Chennai and since the said suit got dismissed, on 28.7.1999, they have preferred an appeal before the Court of Principal Judge, City Civil Court, Chennai. It further comes to be known that since there was delay in preferring the appeal, the respondent herein has filed two petitions, the first one in C.M.P.No.448 of 20 00 under Section 5 of the Limitation Act praying to condone the delay of three days in preferring the appeal and the second petition in C.M.P.No.449 of 2000 under Section 149 r/w.151 CPC praying to condone the delay of four days in re-presenting the appeal papers and since the Court below has allowed both the petitions, thereby respectively condoning the delay of three days in filing the appeal with a cost of Rs.100/= to each of the respondents in C.M.P.No.448 of 2000 and condoning the delay in paying deficit court fee of Rs.15,997/=, the respondents therein have come forward to file both the above civil revision petitions on grounds such as that there was not a delay of three days in filing the appeal but more than 45 days; that the appeal memorandum was presented on 10.3.2000 with a Court fee of Rs.50/= only even though the value of the appeal was more than Rs.2.5 lakhs and in such circumstances, the presentation of the appeal on 10.3.2000 itself was void and the Court cannot take note of the said presentation as a valid presentation to compute the delay as three days in filing the appeal.

3. The petitioners would further submit that the learned Judge failed to see that no reason had been adduced sufficient enough to enable the Court to grant time for payment of deficit Court fee under Section 149 C.P.C.; that the learned Judge did not consider the fact that the respondent herein had filed an application to condone the delay in payment of deficit court fee of Rs.15,997/= in I.A.No.449 of 2000 under Section 149 CPC only when the papers were re-presented on 21.4.2 000; that the learned Judge had not even taken note of the averments in the affidavit filed in support of I.A.No.448 of 2000 wherein the respondent had not filed any affidavit but it was the junior counsel who had sworn to the affidavit under Section 149 CPC on the sole ground the application in I.A.No.448 of 2000 should have been rejected; that the learned Judge should have rejected the application in I.A.No.448 of 2000 as the affidavit merely stated that the respondent failed to pay the necessary expenses to the advocate for the purchase of the stamps and hence the court fee was not paid on 10.3.2000 and this clearly proves the latches and recalcitrant attitude of the respondent and hence is not entitled to any indulgence to the discretionary relief of extension of time for payment of deficit court fee under Section 149 CPC; that the learned Judge failed to note that the presentation of the appeal would be proper and valid only on the payment of deficit court fee on the memorandum of appeal and until such time, there is no appeal pending on the file of the court in the eye of law and only after the payment of court fee on the memorandum, the delay from the date of judgment till the date of payment of deficit court fee has to be reckoned in order to arrive at the actual number of days of delay in filing the appeal.

4. During arguments, the learned counsel for the petitioners besides emphasizing the grounds of revision, would submit that before the Court below, only the junior counsel has filed the affidavit and not the party; that when the party himself has no inclination to proceed with his matter, the practice of Advocate filing the affidavit should not be

encouraged; that there is no prayer to condone the delay in paying the deficit Court fee and the prayer in C.M.P.No.449 of 2000 is to condone the delay of four days in re-presenting the appeal; that since the respondent is a company, it cannot plead either ignorance or inability to pay the court fees and the learned Judge has committed a grave error in allowing both the petitions.

5. The learned counsel for the petitioners would also rely on a judgment of the Punjab and Haryana High Court in JABAR SINGH (DIED) AND OTHERS vs. SHADI (DIED) AND OTHERS reported in AIR 1975 Punjab and Haryana 373 wherein it is held:
"…. the provisions of Order 7 Rule 11 do not apply to appeals and that the Appellate Court is entitled to reject an appeal if the Full Court-fee has not been paid without calling upon the appellant to pay the deficient Court-fee, because insofar as the memorandum of appeal is concerned, express provision has been made in Order 41, Rule 3, for its rejection on the grounds stated in that rule. … the appellate Court was not bound to allow the appellant an opportunity to make up the deficiency in Court-fee after the expiry of the period of limitation for preferring the appeal."

6. The learned counsel for the petitioners would also rely on a judgment of the Division Bench of the Allahabad High Court in STATE OF U.P. AND ANOTHER vs. SURENDRA NATH AND OTHERS reported in AIR 1992 Allahabad 127 wherein when there was a delay in filing appeal by State Government without any explanation as to why the appeal was first filed with huge deficiency of court fee and then belatedly filed with proper court fee, the learned Judges observing that `the explanation given by the State Government for not furnishing the full court fee on the first date of filing the appeal is far from satisfactory', have rejected the Section 5 Limitation Act petition and also the memo. of appeal filed by the State Government.

7. On such arguments, the learned counsel for the petitioners would pray to allow both the civil revision petitions. The learned counsel would further submit that if the Court is not accepting her contentions, she may be given liberty to raise the same points before the lower appellate Court.
8. On the contrary, the learned counsel appearing on behalf of the respondent would submit that the respondent is a Government of India undertaking and there are so many procedures for getting sanctions from the company to file the appeal and to pay the Court fee and hence only to avoid such delay, with a bona fide intention, the petitions have been filed before the Court by the junior counsel swearing in the affidavit and no prejudice would be caused to the petitioners in allowing such applications; that since substantial rights of the parties are involved in the appeal, the learned Judge has rightly allowed both the petitions and would pray to dismiss both the above civil revision petitions.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioners in both the above civil revision petitions are respectively the proprietry concern and three

individuals but on the contrary, the respondent is a Corporation Limited in its liability and a Central Government undertaking, which is the special feature that is to be taken note of at the outset and on account of a delay of three days in preferring the appeal, an application in C.M.P.No.448 of 2000 has been filed by the respondent under Section 5 of the Limitation Act and yet another application in C. M.P.No.449 of 2000 under Section 149 r/w.151 CPC has also been filed respectively praying to condone the delay of three days in preferring the appeal and four days in re-presenting the appeal papers and that the Court below, as per its order dated 22.11.2000, has allowed both the said petitions, the first petition filed u nder Section 5 of the Limitation Act remarking that the delay of three days caused in preferring the appeal was neither wilful nor wanton nor even deliberate and though the delay of three days has not been properly explained, the period of delay since being very meagre by three days and hence has ordered condoning the said delay with the cost of Rs.100/= to each of the respondents. The lower appellate Court has consequently, allowed the other petition in C.M.P.No.449 of 2000 condoning the delay of four days in paying the deficit court fee of Rs.15,997/= in view of the earlier petition to condone the delay of three days in preferring the appeal having been allowed with costs. It is only challenging these two orders passed by the Court below, the petitioners have come forward to file the above civil revision petitions.

10. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondent as well. The contentions of the learned counsel for the petitioners, in short, are that for both the delays no proper reasons have been assigned and therefore, the lower appellate Court should have dismissed both the petitions. It is an admitted fact on the part of the lower Court that those delays have not been properly explained on the part of the respondent herein and hence the said Court has allowed the petition with costs, lest, in the ordinary course of business, the delay of three days and four days could be condoned even without any cost being awarded.

11. The latest judicial thinking by various legal propositions evolved by the upper forums of law, particularly that of the Honourable Supreme Court is that there might be the delay, even unexplained, in certain cases. But, just for the reason of delay, disallowing an application for condoning the same, thus obstructing the defaulter from contesting his suit or appeal or application wherein his substantial rights are at stake, is not at all either reasonable or legal wherein even the rights of the defaulter regarding the principles of natural justice to give adequate and reasonable opportunities gets intermingled. Therefore, the present judicial thinking is that the defaulter must be punished, but with what punishment is the point for consideration. Definitely it is not with denial of opportunity but saddling the defaulter with costs. The lower the number of days of delay sought to be condoned, the cost would also be lower and higher the delay, the cost would also be exemplary and therefore it is not with denial of opportunity that the defaulter could be punished but only with costs. If at all the petitioners could claim, it could be only more costs than what has been ordered by the lower Court.

12. A simple example cited in terms of the criminal prosecution and punishment would give clarity to the petitioners herein so far as this legal dictum is concerned. For a case of either theft or hurt though the cases get convicted on the offence coming to be proved, the accused could be punished only within the parameters of law and not with life or death which is a punishment disproportionate, unconscionable, shocking to the conscious and illegal.

13. Likewise, just for the reason of delay, denying the very statutory right of preferring an appeal, in spite of the Courts being given the discretion to condone such delayed filing or prosecution of the case, would be illegal and the defaulter cannot either be obstructed from agitating his legal rights nor could the otherside be permitted to take the toll as though the substantial rights of the petitioners just for the simple reason of delay could be denied.

14. The facts and circumstances of the case in hand and the delay of three days and four days caused respectively being so meagre, particularly when the respondent is a Government undertaking wherein to process the file for preferring the appeal and getting the concurrence at various stages, it is susceptible some delay to occur and in the case in hand only a very meagre delay having occurred, this case cannot be equated with the cases cited on the part of the petitioners wherein the facts and circumstances and the quantum of delay are entirely different and therefore those norms cannot be applied to the facts of the cases in hand.

15. Not only in arriving at the conclusion to allow both the C.M. Ps. on cost, as extracted supra, but also the manner in which the orders have been passed tracing the history of the case, having its own discussions and admitting that the delay has not been properly explained and hence allowing the petitions with such costs, the lower Court is justified and in the said orders passed by the Court below, this Court does not find any iota of reason to cause its interference on such technicalities raised forgetting the fact that the particular provision of law is only recommendatory and discretionary and not mandatory. Therefore, when the particular Court which is to deal with the subject is satisfied with certain norms and arrives at a conclusion, unless the conclusions are either unreasonable or arbitrary or unconscionable, the revision Court cannot cause its interference into such findings and hence this Court does not find any valid or tangible reason to cause its interference into the well considered and merited orders passed by the Court of Principal Judge, City Civil Court, Chennai as per its orders both dated 22.11.2000 and hence the following decision:
In result,
(i)both the above revision petitions are devoid of merits and they are dismissed as such.
(ii)The orders both dated 22.11.2000 made in C.M.P.Nos.448 and 449 of 2000 in A.S.S.R.No.10966 of 2000 by the Court of Principal Judge, City Court, Chennai are hereby confirmed.

However, in the circumstances of the cases, there shall be no

order as to costs.

Consequently, C.M.P.No.2805 of 2001 is also dismissed.

Index: Yes
Internet: Yes

Rao

To

The Registrar,
City Civil Court,
Chennai.